UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 03-344(MJD/RLE)

UNITED STATES OF AMERICA, Plaintiff, v. (1) ERNEST ANTHONY STEVENSON, and (2) PAULA RAE PETRUK, Defendants.	PROPOSED INSTRUCTIONS OF LAW REGARDING FORFEITURE

The United States of America, by and through its attorneys, Thomas B. Heffelfinger, United States Attorney for the District of Minnesota, and Michelle E. Jones, Assistant United States Attorney, hereby submits the attached proposed instructions of law regarding forfeiture in the above case.

Dated: January 24, 2005

Respectfully submitted,

THOMAS B. HEFFELFINGER
United States Attorney

s/ Michelle E. Jones

BY: MICHELLE E. JONES
Assistant U.S. Attorney

Forfeiture Jury Instructions

Members of the jury, you have reached a verdict that the defendants are guilty of conspiracy to commit theft of government funds, as charged in Count 1 of the Superseding Indictment, and mail fraud, as charged in Counts 8 and 9 of the Superseding Indictment. In view of your verdict, you now have one more task to perform. I must ask you to render a special verdict concerning property the United States has alleged is subject to forfeiture by the defendants to the United States in the Forfeiture Allegations of the Superseding Indictment. Forfeiture means that the defendant loses any ownership interest he or she has or claims to have in the property, as a part of the penalty for engaging in criminal activity.

Under federal law, any person who is convicted of conspiracy to commit theft of government funds as charged in Count 1, or of committing mail fraud as charged in Counts 8 and 9, is required to forfeit to the United States any property that constitutes or is derived from proceeds the defendants obtained directly or indirectly, as the result of these violations, whether or not that property has been or can be seized by the Government. If the proceeds of a crime are not available for seizure, the Government is entitled to a personal money judgment against the defendants for an amount equal to the proceeds obtained by the defendants as a result of the violations charged in Counts 1, 8 and 9.

The Government is seeking a money judgment for $45,441.00 as to Count 1, $194.00 as to Count 8, and $194.00 as to Count 9. It is your duty to determine whether the Government has proven, by a preponderance of the evidence[1], that the amount sought is the amount of proceeds the defendants obtained as the result of the violations charged in Counts 1, 8 and 9. If you do not unanimously agree on this amount, then you must determine the amount of proceeds the defendants obtained as the result of the violations charged in Counts 1, 8 and 9.

In considering your forfeiture verdict, you may not consider the degree to which a particular defendant was involved in the offense, because by law each defendant is individually liable for the entire amount of the money judgment.[2]

My previous instructions on the government's burden of proof regarding your verdicts on the guilt of the defendants do not apply to your deliberations and verdicts regarding forfeiture. In deliberating and deciding your verdicts regarding forfeiture, the government need only prove the forfeiture by a preponderance of the evidence, not beyond a reasonable doubt. To prove something by a preponderance of the evidence is to prove that it is more likely true than not true. The decision is made by considering all the evidence on the subject and deciding which evidence you believe. Each party is entitled to the benefit of all evidence received, regardless of who offered the evidence. Preponderance of the evidence is a lesser standard than proof beyond a reasonable doubt.

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[1] Libretti v. United States, 516 U.S. 29 (1995) (Forfeiture is an element of sentencing; therefore, the preponderance of evidence standard applies); see also United States v. Myers, 21 F. 3d 826, 829 (8th Cir. 1994); United States v. Bieri, 21 F. 3d 811, 814-15 (8th Cr. 1994).

[2] United States v. Simmons, 154 F. 3d 765, 769 (8th Cir. 1998)

"Proceeds" means property of any kind obtained, directly or indirectly, as the result of the commission of the offense, and any property traceable thereto.

While deliberating, you may consider any evidence, including testimony, offered by the parties at any time during this trial.

Your previous finding that the defendants are guilty of conspiracy to commit theft of government funds, and guilty of mail fraud is final, conclusive, and binding. Because you are bound by your previous finding that the defendants are guilty, I direct you not to discuss in your forfeiture deliberations whether the defendants are guilty or not guilty of the violations of which you have already found the defendants guilty.

Other than the standard of proof, which I just discussed with you, all of my previous instructions apply to your deliberations with respect to the Special Verdict.

A Special Verdict Form has been prepared for your use. You are asked to determine unanimously whether $45,441.00 is to be forfeited to the United States in the form of a money judgment for Count 1, $194.00 for Count 8 and $194.00 for Count 9. If you do not unanimously agree on this amount, then you must determine what amount, if any, should be forfeited. You may answer by simply putting an "X" or a check mark in the space provided next to the words "Yes" or "No." The foreperson must then sign and date the Special Verdict Form.

Manual of Model Criminal Jury Instructions for the Eighth Circuit § 6.21.853 and Fed. R. Crim. P. 32.2 (as modified).